

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1704

ADOPTION OF DESTINY.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The father appeals from a Juvenile Court decree that terminated his parental rights and declined to order posttermination or postadoption visits with the child.² On appeal, the father only challenges the latter aspect of the decree. Specifically, he argues that visitation is in the child's best interests and that the judge abused her discretion because the father was "consistent" in attending visits with the child. We affirm.

Background. The father does not contest the judge's findings of fact, including the finding of his unfitness. The child tested positive for opiates, marijuana, and suboxone when she was born in November, 2016.³ The Department of Children and Families (DCF) was awarded custody of the child on December 8,

¹ A pseudonym.

² The mother died during the pendency of these proceedings.

³ The father had taken methadone for "many years" and relapsed on heroin roughly two weeks prior to the child's birth.

2016. After the child was discharged from the hospital, DCF placed her in the care of the paternal grandparents. The child's paternal aunt and uncle were also approved to be her "frequent visitors and caretakers."⁴

The child was eighteen months old at the time of trial. In the judge's decision terminating the father's parental rights, she addressed the visitation issue:

"There is no evidence that contact between Father and the subject child is in the subject child's best interest. Due to [the child]'s young age at the time of removal and Father not providing sole care for her at any stage of her short life, this Court finds that no bond exists between Father and the subject child. As such, I decline to order post termination or post adoption contact between the subject child and Father. Post termination contact and post adoption contact, if any, between the subject child and Father is best left to the decision making of the [DCF] as to post termination contact and the adoptive parent as to post adoption contact especially since the goal is adoption by paternal relatives. Adoption of Ilona, 459 Mass. 53, 63 (2011)."

Discussion. "Once it is established that a parent is unfit, the decision whether to grant postadoption [or posttermination] visits must be left to the sound discretion of the trial judge." Adoption of John, 53 Mass. App. Ct. 431, 439 (2001). Nonetheless, such a determination "must be 'grounded in the over-all best interests of the child, based on emotional bonding and other circumstances of the actual personal

⁴ The child's paternal aunt and uncle are her preadoptive resources, and "had many visits" with her. "They have spent a significant amount of time" attending to her needs.

relationship of the child and the biological parent, not in the rights of the biological parent nor the legal consequences of their natural relation'" (citation omitted). Adoption of Terrence, 57 Mass. App. Ct. 832, 839 (2003). The purpose of postadoption and posttermination visitation "is not to strengthen the bonds between the child and [her] biological mother or father, but to assist the child as [she] negotiates, often at a very young age, the tortuous path from one family to another." Adoption of Vito, 431 Mass. 550, 564-565 (2000).

The father argues that posttermination and postadoption visitation is in the child's best interests. We disagree. As the judge found, there is little to no evidence of a meaningful bond between the father and the child in the record. See Adoption of Ilona, 459 Mass. at 63-64. They have only interacted in the context of supervised visitation, and during the visits, the father was unable to meet the child's needs without assistance.⁵ At times, the father demonstrated "unsafe" behavior toward the child.⁶ The father was not in attendance at

⁵ The father "did not always comply with bringing the necessary items" to the visits, and often relied on the paternal grandmother to accompany him and bring the needed items. Indeed, the father stated that he needed the paternal grandmother to accompany him to the visits because he did not feel prepared to care for the child alone. The father could not change the child's diaper without assistance from the supervising social worker or the paternal grandmother.

⁶ During one visit, he threw the child up in the air and she almost hit the ceiling. During another visit, he hit the child

the trial, failed to attend some of the visits, was late for others, and did not avail himself of a "few" opportunities for more visitation time with the child. The adoptive parents are open to the father maintaining contact with the child if he maintains sobriety and a level of stability.⁷ The judge's determination that posttermination and postadoption visitation were not in the child's best interests was supported by the evidence. As such, we conclude there was no abuse of discretion.

Decree affirmed.

By the Court (Blake, Kinder & Desmond, JJ.⁸),

Joseph F. Stanton
Clerk

Entered: July 11, 2019.

in the head with a toy football. On another visit, he wanted to take the child down a steep skateboarding ramp in her stroller.

⁷ Contrary to the father's argument on appeal, there is ample evidence in the record to show a bond between the child and the preadoptive resources, the paternal aunt and uncle. As the judge found, "[the child] has had the opportunity to develop a close bond with both her parental grandparents and pre-adoptive resource/paternal aunt and uncle as they have worked together to ensure that [the child] is provided with routine and ongoing care."

⁸ The panelists are listed in order of seniority.